

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

SANDRA C. TORRES, individually §
and as Mother and Representative of the Estate §
of Decedent, ELIAHNA TORRES, §
and as next friend of E.S.T., minor child; §
ELI TORRES, JR.; and §
JUSTICE TORRES, §
Plaintiffs, §

v. §

DANIEL DEFENSE, LLC, et al., §
Defendants. §

Case No. 2:22-cv-00059-AM-VRG

**ADVISORY TO THE COURT AND NOTICE OF SUPPLEMENTAL AUTHORITY
REGARDING UVALDE COUNTY’S MOTION TO DISMISS AND
UVALDE COUNTY OFFICERS’ MOTION TO DISMISS**

TO THE HONORABLE CHIEF DISTRICT COURT JUDGE ALIA MOSES:

Defendants Uvalde County, Uvalde County Sheriff Ruben Nolasco, Uvalde County Constable Emmanuel Zamora, and Uvalde County Constable Johnny Fields (collectively, “Uvalde County Defendants”) hereby file this Advisory and Notice of supplemental authority regarding Uvalde County’s Motion to Dismiss (Dkt. 58) and Uvalde County Officers’ Motion to Dismiss (Dkt. 59), and would respectfully advise the Court as follows:

I. ADVISORY

1. Previously, the Uvalde County Defendants and other law enforcement defendants in this case had organized a “Settlement Conference” for March 11, 2024. The Conference was for the community members affected by the tragedy that makes the basis of this lawsuit at Robb Elementary School.¹ However, on February 19, 2024, certain community members withdrew from the planned Settlement Conference and it has now been permanently canceled.

2. Accordingly, the Defense does not anticipate this lawsuit settling at this time.

II. NOTICE OF SUPPLEMENTAL AUTHORITY

3. The Uvalde County Officers and the County of Uvalde filed 12(b)(6) Motions to Dismiss approximately 11 months ago—on April 3, 2023.² Within, these Defendants briefed this Court that the State Created Danger Exception did not exist in the Fifth Circuit and was not “clearly established law” pursuant to the Fifth Circuit’s precedent in *Fisher v. Moore*.³ On November 13, 2023, the *Fisher* plaintiff petitioned the United States Supreme Court to grant Certiorari and reverse the Fifth Circuit and hold that the State Created Danger Doctrine (1) exists and (2) “was clearly established by November 2019...”⁴

4. On January 8, 2024, the United States Supreme Court denied the *Fisher* Petition for a Writ of Certiorari.⁵ Accordingly, the Fifth Circuit’s precedent in *Fisher* is final and binding authority in the case at hand.⁶

¹ The conference was organized through these community members’ legal counsel.

² See Dkt. 58 and Dkt. 59.

³ *Fisher v. Moore*, 73 F.4th 367 (5th Cir. 2023) (denying en banc rehearing).

⁴ *Fisher v. Moore*, et al., 2023 WL 7997683, at *i. (Petition for a Writ of Certiorari).

⁵ *Fisher v. Moore*, 144 S. Ct. 569 (2024).

⁶ *Fisher*, 73 F.4th 367 (holding “[t]his circuit has never adopted a state-created danger exception to the sweeping “no duty to protect” rule. And a *never*-established right cannot be a *clearly* established one.”).

Respectfully submitted,

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EMMANUEL ZAMORA, AND UVALDE
COUNTY CONSTABLE JOHNNY FIELD**

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March, 2024, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Stephen B. Barron

Stephen B. Barron